



# A VIEW ON ANTI-CONVERSION LAWS IN INDIA

Dr. Binalben Sanjaykumar Patel

I/C Principal, Law College, Himatnagar, Gujarat, India.

## ABSTRACT

India, the world's biggest democratic country, is home to people of various religious backgrounds who are regulated by divergent family laws and so treated unequally by the state and society. India's main population is Hindu. Muslims, Christians, and a few other religions each have a sizable following. Tolerance is an odd but necessary civic virtue in a pluralistic society. Ancient Indian writings demonstrate that ancient culture incorporated the values of universal toleration and acceptance. Individuals must learn to live peacefully and in harmony with people and behaviours they despise. However, changes on their own are immobile in this universe. It is not novel for individuals to make tactical modifications in their own beliefs in order to conform to their self-interest. When individuals gain various benefits based on their spiritual allegiance and have the freedom to profess, practise, and propagate any religion, a prescription for quick religious conversion is always created. Thus, religion is a highly volatile subject in India, and religious conversion adds to the problem's volatility. Conversions of this nature present a legal difficulty. As a result, numerous state governments have implemented anti-conversion legislation in order to prevent conversions caused by pressure or seduction. Such restrictions have come under fire for allegedly violating one's right to religious freedom. Additionally, these legislation garner a high level of political scrutiny. These laws are implemented by political parties with the purpose of attracting a sizable voting base. These laws are dubbed 'uncivil proposals' because they identify a specific segment of society as a possible threat, so paving the path for increased marginalisation of minority communities. The purpose of this article is to explore religious conversion in light of existing constitutional laws, judicial rulings, and secularism. This article discusses the difficulties that interfaith weddings confront in the face of anti-conversion legislation. This section also analyses and critiques anti-conversion legislation.

**KEYWORDS:** Anti-Conversion Laws, Law, Secularism, India.

## INTRODUCTION:

Anti-conversion law is a type of legislation that prohibits people from converting to the euphemistically named Freedom of Religion laws, which are mostly used in India, are state-level regulations designed to regulate spiritual converts and eventually put an end to them. These laws were put in place to prevent anyone from being compelled to convert. These regulations are meant to prevent people from being converted from one faith to another in an immoral manner. Anti-conversion legislation adopted in many states is being scrutinised due to its vagueness and lack of legitimate justifications. Arunachal Pradesh, Chhattisgarh, Maharashtra, Jharkhand, Uttarakhand, Odisha, and Himachal Pradesh are the eight states that have laws in place. The states' goal in drafting this bill is to limit communities' and individuals' freedom to convert "from the faith of one's forebears," typically in the guise of protecting those who make up society's weaker or more readily "influenced" segments, such as girls, boys, backward castes, and untouchables. These are intended to prevent anyone from converting or attempting to convert another person, either directly or indirectly, using "forcible" or "fraudulent" tactics, or through "allurement" or "induction."

The longing for a better world has led to the concept of salvation, which may be the source of religion. Religion and spirituality are such an important aspect of human nature that prohibiting them outright might be considered a violation of human rights. The right to follow one's own religion is a fundamental right guaranteed by our constitution to every Indian citizen. However, just as nothing in life is constant except change, a person has been given the right to select the religion that he wishes to practise, and if he chooses to convert to another religion for this purpose at some point in his life, he should be permitted to do so as part of his fundamental rights. Despite India's constitutional provisions for religious freedom, almost a third of the country's 28 states restrict or prohibit religious conversion in order to protect the majority faith from perceived threats from religious minorities.

## THE IMPACT OF RELIGIOUS CONVERSION:

A person's religious conversion to Islam from a non-Islamic faith is invalid if it is done for the purpose of polygamy. In India, neither Islam nor the law recognise such conversions. A married Hindu guy converted to Islam for the purpose of solemnising another marriage in the case of *Sarla Mudgal vs Union of India*<sup>4</sup>, as polygamy is permissible in Islam. The Supreme Court concluded that *Ipso-facto* conversion to another faith does not dissolve the first marriage since no one is permitted to profit from his own mistakes. In addition, the court ruled that a married man who converts to Islam is not allowed to marry another woman following his conversion. It was ruled that it constituted an act of bigamy, as defined by Section 17 of the Hindu Marriage Act, 1955, and punishable under Section 494 of the Indian Penal Code, and that the second marriage was void.

The court stated in *Vilayat Raj versus Smt. Sunita*<sup>5</sup> that if both parties to the marriage were Hindu at the time of marriage, pre-nuptial law, namely the Hindu Marriage Act, applied even after conversion to Islam.

It was held in *Lilly Thomas vs Union of India*<sup>6</sup> that an apostate spouse is guilty of bigamy under section 494 of the Indian Penal Code if he marries another woman after converting to Islam. It was determined that convicting such a person of bigamy does not violate the freedom of religion guaranteed by Article 25 of the Constitution, and so Section 17 of the H.M.A. 1955 applies.

Following the proclamation of the aforementioned judicial rulings, it is apparent that polygamy is no longer a valuable individual for religious conversion to Islam. A person does not lose his Hindu identity just because he declares that he no longer believes in his religion. Even if a person does not practise his faith, he will remain a Hindu until he renounces it or begins to live and act as an atheist or agnostic, or begins to consume beef, or insults God or Goddesses. He remains a Hindu even if he expresses his faith in a different religion. *Kulundurivalu against Chandra Shekharan*

## HISTORY OF ANTI CONVERSION LAWS:

India's history of religious conversion has remained immensely relevant in these modern eras. Religious conversion laws trace all the way back to the British colonial era, when Hindu princely kingdoms enacted limits on conversion in order to safeguard Hindu religious identity against British missionaries. Anti-conversion legislation developed in India as a result of the country's long history of religious practise. These regulations first appeared during the British colonial period, despite the fact that the government did not enact any anti-conversion legislation. However, they were enacted by Hindu princely governments during the early 1930's by British missionaries. Several states implemented such laws during the colonial period to prevent individuals from transferring their religion to Christianity. The goal was to increase the number of Hindu adherents in India.

Following India's independence, the Indian conversion (Regulation and Registration) Bill was introduced in 1954, with the intent of enforcing "missionary licensure and conversion registration with government officials." This bill did not receive a majority vote in parliament. After six years, the Backward Communities (Religious Protection) Bill 1960 was introduced to prevent Hindus from converting to faiths such as Islam, Christianity, Judaism, and Zoroastrianism.

## LAWS OF DIFFERENT STATES:

Odisha and Madhya Pradesh were the first states to enact legislation protecting religious freedom. A number of states have passed "Freedom of religion" legislation over the years in order to prohibit religious conversions that are forced, fraudulent, or induced. They are as follows:

- The Orissa Freedom of Religion Act of 1968
- Madhya Pradesh passed the Dharma Swatantraya Adhiniyam in 1968 and recently it was replaced by Madhya Pradesh Freedom of Religion Ordinance, 2020.

- Arunachal Pradesh Freedom of Religion Act, 1978
- Chhattisgarh Religion Freedom (Amendment) Act, 2006
- Gujarat Freedom of Religion Act passed in 2003 and further amended in 2021.
- Himachal Pradesh Freedom of Religion Act passed in 2006 and further amended in 2019.
- Jharkhand Freedom of Religion Act of 2017.
- Uttarakhand Freedom of Religion Act of 2018.

#### CONSTITUTIONAL VALIDITY:

The Constitution protects religious freedom but does not separate state and religion. It states that the state shall not have any religion nor favour any religion. The word 'Secularism' was added to the constitution by the 42nd Constitution Amendment Act, however it was already included in Articles 25, 26, 27 and 28.

Part III of the Indian Constitution endorses religious freedom. Article 25 plainly declares that all persons are equally entitled to freedom of conscience and the right to profess, practise, and propagate religion, subject to public order, morality, and health, and other requirements of this Part. Article 25 guarantees freedom of conscience, practise and conversion of any religion, including none. Article 21 of the constitution provides the right to marry whoever one wishes.

In some circumstances, state anti-conversion legislation are based on high court judgments. Uttar Pradesh's recently enacted Prohibition of Unlawful Conversion of Religion Act is based on the Allahabad High Court's judgement in September 2020. The court ruled that marriage-based conversion is invalid. In November 2017, the Uttarakhand High Court ruled that conversion for marriage is a sin and urged the state to legislate against it. The 2018 Uttarakhand Freedom of Religion Act is based on this. Forcible conversions were also banned by the Rajasthan High Court in December 2017.

In *Ratilal Panachand Gandhi vs. State of Bombay and others*<sup>5</sup>, the Supreme Court held that every person has a fundamental right under our constitution not only to hold religious beliefs that are approved by his judgement or conscience, but also to express those beliefs and ideas in acts that are enjoined or sanctioned by his religion, and to propagate those religious views for the edification of others. In *Rev Stanislaus vs. State of Madhya Pradesh*<sup>6</sup>, the Supreme Court questioned whether the right to convert was included. The court affirmed the Orissa Freedom of Religion Act 1968 and the Madhya Pradesh Dharma Swatantrata Adhiniyam 1968. Article 25 provides 'freedom of conscience' and the right to freely profess, practise, and spread religion. The freedom to freely profess, practise, and promote religion does not include the right to convert. Right to spread religious belief or explanation of religious tenets Forced conversion violates Article 25's "freedom of conscience". A person's right to convert must be governed by the state.

#### ARGUMENTS IN FAVOR:

Religious conversions are not "totally voluntary," according to a Nagpur chief justice-led committee. There are various offences involved in forcing someone to change their religious beliefs, including as torture (Section 342 IPC), intimidation (Section 506 IPC), kidnapping (Section 359-369 IPC), and assault (Section 508). (Section 352 IPC). An anti-conversion law does not preclude people from converting only for the purpose of marriage, the Uttarakhand High Court stated. Instead, it forbids unions entered into "solely for the purpose of conversion". These laws have little effect on the number of interfaith unions that take place. According to the government, new rules will not ban conversions, but will instead keep an eye on dubious conversions carried out under duress. These regulations are designed to protect young girls from being exploited because of their vulnerability to being "allured" by marriage. Those who want to ensnare and undermine societal harmony in the name of marriage will be held accountable under the law. A number of human rights organisations claim that anti-conversion legislation has resulted in only a few cases and no convictions, despite numerous condemnations.

#### ARGUMENTS AGAINST:

According to a USCIRF report, while India emphasises "complete legal justice" and prohibits religious discrimination, state and national laws do not comply with international standards for religious freedom or conviction, such as Article 18 of the United Nations Declaration of Human Rights and Article 18 of the Universal Covenant on Civil and Political Rights. According to the research, "anti-conversion laws infringe on the right of the person to convert, favour Hinduism over minority religions, and constitute a fundamental challenge to Indian secularism." Anti-conversion legislation is discriminatory against minorities.

The legislation can be used to violate the fundamental rights provided by Articles 25 and 21 of the constitution, posing a threat to secularism. Anti-conversion legislation violates the rights to privacy, choice, and marital freedom. The requirement to declare one's desire to convert prior to conversion contradicts the right to maintain one's beliefs. These laws implicitly police religious intermarriage. A

law that institutionalises and legalises the concept of anti-interfaith weddings would further fracture the social fabric. It's also tough to tell if a religious conversion is actually done simply for the purpose of marriage. There are numerous ways it could be abused. Most anti-conversion legislation is predicated on the belief that women are incapable of making their own decisions and hence fall subject to coerced conversions. These restrictions deprive women of their freedom of choice and, in effect, limit their sexuality. In the *Soni Gerry case*<sup>11</sup>, the Supreme Court cautioned justices against acting as super guardians, bowing to the mother's sentiments or the father's egotism. Furthermore, naming a specific segment of a society as a potential threat will lead to the marginalisation of specific communities.

#### CONCLUSION:

States are constitutionally empowered to establish legislation restricting religious conversions and interfaith marriages. These laws must respect the individuals' rights to equality, freedom and personal liberty, as well as the right to life and privacy, with minimal interference from the state and society at large. Thus, the government enacting anti-conversion legislation must guarantee that these laws do not jeopardise an individual's fundamental rights or undermine national integration; rather, these laws must find a balance between freedoms and malefic conversions.

#### REFERENCES:

1. Anti-Religious Conversion Bill in Indian state hits Roadblock, Deutsche Presse-Agentur May 20, 2006.
2. Chandan Mohanty, Anti-conversion laws in India A critical Analysis, Lex Quest Foundation, January 25, 2015
3. Hannibal Goitom, The controversy over marriage and Anti-conversion laws in India, Library of Congress, march 25, 2021.
4. James Andrew Huff, Religious Freedom in India and Analysis of the constitutionality of Anti-conversion Laws.
5. Karishma, Anti-conversion Laws in India- challenges and way ahead, IAS Express, Jan 19, 2021.
6. Robert D. Baird, Traditional values, Governmental values and Religious conflict in contemporary India, 1998.